

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant, City of Manchester, Missouri, and by and through counsel and pursuant to Federal Rule of Civil Procedure 56 moves this Court for an order granting it summary judgment on all of Plaintiffs' claims. In support of this Motion, Defendant states as follows:

1. Plaintiffs, mother and daughter members of Westboro Baptist Church in Topeka, Kansas, challenge three versions of § 210.264 of Defendant's Municipal Code. This is a facial challenge, alleging that each version of the ordinance violated or violates Plaintiffs' rights under the Free Speech Clause.

2. Plaintiffs lack standing to challenge any of the three versions of § 210.264. Neither they nor any members of their church have any connection to Manchester and none had protested in Manchester prior to January of this year. Neither Plaintiffs nor any members of Westboro have ever protested at a funeral or burial service in Manchester. Plaintiffs cannot show an objectively reasonable possibility that the two former versions of § 210.264 could have been enforced against them nor can they show an objectively reasonable possibility that the

current version of § 210.264 could be enforced against them in the future. Consequently, they cannot invoke the jurisdiction of this Court.

3. Even if they have standing, Plaintiffs are collaterally estopped from challenging the current version of § 210.264. Shirley Phelps-Roper, as a representative of Westboro Baptist Church and its members (including her daughter), unsuccessfully challenged those portions of Ohio's funeral protest statute that comprise the current version of § 210.264. Under the federal common law of preclusion, Plaintiffs cannot challenge the same legislative provisions again in a new venue.

4. The current version of § 210.264, which creates a 300-foot fixed privacy zone around the site of a funeral or burial service and is in place from one hour before a service to one hour after, is a constitutionally valid, content-neutral, time, place and manner restriction. It is narrowly tailored to further the significant government interest in protecting the privacy of emotionally vulnerable mourners and survivors, an interest that has been acknowledged by the Supreme Court. The ordinance leaves open ample alternative avenues of communication to Plaintiffs, including protests at other sites and other times, as well as more effective means, such as Westboro's websites.

5. Further grounds in support of this Motion are set forth in the accompanying Memorandum in Support and attachments thereto, which together are incorporated herein by reference.

WHEREFORE, for all the foregoing reasons, Defendant City of Manchester, Missouri prays that this Court enter an order granting it summary judgment on all of Plaintiffs' claims, awarding Manchester its costs and attorney's fees pursuant to 42 U.S.C. § 1988, and providing such other and further relief as this Court deems just and proper.

Respectfully submitted,

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By: /s/ Evan Z. Reid

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was sent via this Court's electronic mail system to counsel of record, this 15th day of February, 2010.

/s/ Evan Z. Reid